IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5244 of 2007()

CRIME NO. 132/07 OF PAVARATTY POLICE STATION

PETITIONER/7TH ACCUSED

SHINOY, S/O VELAYUDHAN,
VELLAMPARAMBIL HOUSE, POOVATHUR P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT/STATE

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1. THE SUB INSPECTOR OF POLICE,
PAVARATTY POLICE STATION.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5244 of 2007

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Dated this the 17th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 7th accused. Altogether there are 9 accused persons arrayed now. The accused face allegations, inter alia, under Section 307 I.P.C. This incident is also one in connection with political animosity between two groups - R.S.S. and C.P.M. In the F.I.R. the petitioner is not named. The first accused and other seven persons identifiable by sight are the persons shown as accused. Four persons have suffered injuries. The injuries suffered include very serious injuries also, points out the learned Prosecutor. Though the petitioner's name was not specifically given in the F.I.S./F.I.R. one of the injured persons on examination had revealed the identity of the petitioner. He had been arrayed as accused as per report dt. 26.4.2007 also. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False and vexatious allegations are

being raised against the petitioner merely because he happens to belong to the R.S.S. The petitioner does not deserve to endure the trauma of arrest and incarceration. Anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Prosecutor opposes the application. It is true that the petitioner has not been named in the F.I.R., but nothing crucial turns upon that, submits the Prosecutor. The F.I. statement was given by a person, who had specifically named only the first accused. The subsequent investigation clearly indicate the complicity of the petitioner. The Investigator has no vexatious intent as can be seen from the fact that they have waited for the investigation make progress before arraying the petitioner as an accused. In any view of the matter, the petitioner does not deserve the invocation of the discretion under Section 438 Cr.P.C. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate and seek regular bail in the ordinary course, submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition. I am of the opinion that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the

Investigator or the learned Magistrate and then seek regular bail in the ordinary course. I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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